

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

NORTH CLOVER CREEK/COLLINS
COMMUNITY COUNCIL, et al.,

Petitioners,

v.

PIERCE COUNTY,

Respondent,

and

CITY of SUMNER, JOHN MERRIMAN & WM.
MERRIMAN, and MARK BOWMER & BELINDA
BOWMER,

Intervenors.

CASE NO. 10-3-0003c
(North Clover Creek)

ORDER FINDING COMPLIANCE

I. BACKGROUND

On August 2, 2010 the Board issued its Final Decision and Order (**FDO**) in this case. The Board ruled that the County's adoption of Ordinance No. 2009-17s complied with the Growth Management Act with respect to several of the allegations of Petitioners but found noncompliance in three instances and remanded the plan to the County to correct the errors. The FDO provided:

- ...
2. Pierce County's adoption of Ordinance No. 2009-17s *Amendment U-5* was **clearly erroneous** and **does not comply** with the urban growth area requirements of RCW 36.70A.110.
 3. Pierce County's adoption of Ordinance No. 2009-17s *Amendment U-8a* was **clearly erroneous** and **does not comply** with the urban growth area requirements of RCW 36.70A.110 and the consistency requirements of RCW 36.70A.070 (preamble).

- 1 4. Pierce County's adoption of Ordinance No. 2009-17s *Amendment C-3* was
2 **clearly erroneous** and **does not comply** with the requirements of RCW
3 36.70A.070(5) and the consistency requirements of RCW 36.70A.070
4 (preamble).
5 5. The Board **remands** Ordinance No. 2009-17s, *Amendments U-5, U-8a, and C-3*,
6 to Pierce County to take legislative action to comply with the requirements of the
7 GMA as set forth in this Order.¹

8 The Final Decision and Order established November 24, 2010, as the deadline for the
9 County to take appropriate legislative action.

10 On December 7, 2010, the Board received Respondent Pierce County's Statement of
11 Actions Taken to Comply (**SATC**), attaching Ordinance No. 2010-86s² and Ordinance No.
12 2010-87.³ The County also provided its Compliance Index, documenting the public process
13 undertaken in connection with these enactments.
14

15 On December 21, 2010, the Board received Petitioner Futurewise's Response to Pierce
16 County Statement of Actions Taken to Comply. Futurewise "does not object to and concurs
17 with a finding of compliance."
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19 On December 28, 2010,⁴ the Board received Petitioner North Clover Creek's Objections to
20 Pierce County's Compliance on Remand. North Clover Creek objected to the portion of
21 Ordinance 2010-86S that repealed the policy in the Mid-County Community Plan requiring
22 "no net loss" of Rural Separator lands.
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28 ¹ FDO, at 63.

29 ² "An Ordinance of the Pierce County Council Amending the Pierce County Comprehensive Plan Title 19A, the Mid-County
30 Community Plan Chapter 19B.100 and the Pierce County Zoning Atlas Pursuant to a Final Decision and Order in the
31 Central Puget Sound Growth Management Hearings Board Case No. 10-3-0003c; and Adopting Findings of Fact."

32 ³ "An Ordinance of the Pierce County Council Amending the Pierce County Comprehensive Plan Title 19A, the Graham
Community Plan Chapter 19B.110 and the Pierce County Zoning Atlas Pursuant to a Final Decision and Order in the
Central Puget Sound Growth Management Hearings Board Case No. 10-3-0003c; Amending the Pierce County
Development Regulations, Chapter 18B.180 Sign Design – Graham Pursuant to Central Puget Sound Growth
Management Hearings Board Case No. 10-3-0007; and Adopting Findings of Fact."

⁴ At the Compliance Hearing, Pierce County raised its objections to the late filing of the North Clover Creek response.

1 No briefing was filed by the Halmo Petitioners or Merriman Intervenors.⁵

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3 The Compliance Hearing was held telephonically on January 11, 2011. Present for the
4 Board were Presiding Officer Margaret Pageler and panelists Dave Earling and Will Roehl.
5 North Clover Creek was represented by Dan Haire. The four Halmo petitioners were
6 represented by their designated spokesperson James Halmo. Futurewise was represented
7 by its attorney Jill Smith. Pierce County was represented by Deputy Prosecutor Pete Philley.
8 John Merriman spoke for the intervenors on Amendment U-8a. Intervenor City of Sumner
9 did not attend, as the County had been found compliant with respect to the City's concerns.
10 Kandy Clark of Capitol Pacific Reporting Inc. provided court reporting services.
11

12 II. DISCUSSION

13 The Remanded Issues

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15 In the FDO the Board ruled that Pierce County's adoption of Ordinance No. 2009-71s, which
16 made twenty-nine amendments to the Pierce County Comprehensive Land Use Plan, failed
17 to comply with the requirements of the GMA as to three amendments:

- 18 • Amendment U-8a. "[A]doption of Amendment U-8a was **clearly erroneous** in
19 that the UGA expansion was not necessary to accommodate projected growth,
20 as required by RCW 36.70A.110(2), and the action was **inconsistent** with
21 provisions of the County Comprehensive Plan (PCC 19C.10.055.F), Mid-County
22 Community Plan (Standard 1.5.5), and Countywide Planning Policies (UGA-2.2).
23 Thus, the adoption of Amendment U-8a **does not comply** with RCW 36.70A.110
and RCW 36.70A.070 (preamble)." ⁶
- 24 • Amendment C-3. "The Amendment [C-3] **does not comply** with RCW
25 36.70A.070(5), as defined by RCW 36.70A.030(15). The Amendment is
26 inconsistent with the Graham Community Plan and with the signage restrictions
27 in the majority of the community plans and non-community plans for most of
Pierce County's rural areas."⁷
- 28 • Amendment U-5. "The Board concludes that the County's action in adopting
29 Amendment U-5 violates the GMA requirement to designate urban growth areas
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32 ⁵ At the Compliance Hearing, the Presiding Officer agreed to allow Mr. Merriman to file his remarks by mail following the hearing, but no such papers were filed.

⁶ FDO, at 33-34.

⁷ FDO, at 62.

1 based on the OFM 20-year population projection and **does not comply** with
2 RCW 36.70A.110.”⁸

3 **The County’s Compliance Action**

4 On remand, at the November 2, 2010 County Council meeting, after public testimony and
5 Council discussion, Pierce County enacted Ordinance Nos. 2010-86s and 2010-87 in order
6 to comply with the Board’s FDO. Ordinance 2010-86s deals with Amendment U-8a and
7 Ordinance 2010-87 deals with Amendments C-3 and U-5.
8

9 To achieve compliance with respect to Amendment U-8a, Ordinance 2010-86s provides:
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- 11 • Section 1 repeals Amendment U-8a;
- 12 • Section 2 amends the Mid-County Community Plan by repealing land use
13 element policies for rural residential use that mandate “no net loss of Rural
Separator lands;”
- 14 • Section 3 repeals the Amendment U-8a zoning map change.

15 To achieve compliance with respect to Amendment C-3, Ordinance 2010-87 Section 2
16 repeals Amendment C-3 and Section 3 repeals the Amendments made to 18B.180 PCC to
17 implement Amendment C-3.⁹
18

19 To achieve compliance with respect to Amendment U-5, Ordinance 2010-87 Section 1
20 repeals Amendment U-5 and Section 4 repeals the zoning map change that had been made
21 to implement Amendment U-5.
22

23 **Board Discussion**

24 *Amendment U-8a.* The Board’s FDO found Amendment U-8a non-compliant with the GMA
25 limitations on expanding the UGA as well as inconsistent with the Mid-County Community
26 Plan provisions for “no net loss” of rural separator lands. Pierce County’s compliance action
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31 ⁸ FDO, at 48-49.

32 ⁹ Amendments to Chapter 18B.180 PCC to implement Amendment C-3 were challenged in a separate action
by the Halmo petitioners. *Halmo II v Pierce County*, GMHB Case No. 10-3-0007. A Joint Stipulation for Order
of Dismissal was filed in that case November 29, 2010, stipulating that Section 3 of Ordinance 2010-87
repeals the regulations and renders the case moot.

1 involved both repealing the Merriman UGA expansion and repealing the “no net loss”
2 provision in the Mid-County Community Plan.

3
4 At the Compliance Hearing, Petitioner Halmo orally objected to deletion of the “no net loss”
5 provisions, arguing that repealing the Merriman amendment was sufficient to bring the
6 County into compliance with the FDO. Petitioner North Clover Creek raised a more
7 complete objection, arguing that under the County’s adopted procedures, amendment to the
8 Mid-County Community Plan policies requires a process that includes consultation with the
9 community representatives.
10

11 The Board notes that it does not dictate to cities and counties the action they must take to
12 bring their legislation into compliance with the GMA. Often, as here, there are alternatives to
13 simple repeal of the offending amendments. The County has discretion in determining how
14 to comply, so long as its action does not violate some other GMA requirement. The Board
15 finds that it was within the County’s discretion to both repeal Amendment U-8a and delete
16 the “no net loss” provisions of the Mid-County Community Plan.
17

18
19 The Board notes from the Compliance Index that members of the public, including parties to
20 this case, commented on the proposed “no net loss” policy changes at the time of the
21 October 25 public hearing before the Council’s Community Development Committee.¹⁰
22 North Clover Creek has preserved a challenge to this part of the County’s action in a new
23 Petition for Review, GMHB Case No. 10-3-0015.¹¹
24

25 The Board finds that the County’s action in adopting Ordinance No. 2010-86S cured the
26 deficiency identified in the FDO. The County’s repeal of Amendment U-8a and the “no net
27 loss” policies removed the violation of RCW 36.70A.110(2) and the inconsistency with
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32 ¹⁰ Index #18-21.

¹¹ At the Compliance Hearing, the County stipulated that it will not raise a *res judicata* defense to the new petition based on the Board’s compliance ruling in the present case.

1 County Comprehensive Plan and policy provisions. The Board concludes that the County
2 has **complied** with the GMA and the Board's order as to Amendment U-8a.

3
4 *Amendment C-3.* The Board's FDO found Amendment C-3 non-compliant with the GMA
5 requirements for the rural element – RCW 36.70.070(5) – and inconsistent with the Graham
6 Community Plan and other County policies. Pierce County's enactment of Ordinance No.
7 2010-87 repeals Amendment C-3 and subsequent signage regulations.

8
9 The Board finds that the County's action in adopting Ordinance No. 2010-87 cured the non-
10 compliance identified in the FDO. The County's repeal of Amendment C-3 removed the
11 violation of RCW 36.70A.070(5) and the inconsistency with the Graham Community Plan
12 and other County policy provisions. The Board concludes that the County has **complied**
13 with the GMA and the Board's order as to Amendment C-3.

14
15 *Amendment U-5.* The Board's FDO found Amendment U-5 in violation of the GMA
16 requirement to designate UGAs based on the OFM 20-year population projection and non-
17 compliant with RCW 36.70A.110. Pierce County's enactment of Ordinance No. 2010-87
18 repeals Amendment U-5 in its entirety.

19
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21 The Board finds that the County's action in adopting Ordinance No. 2010-87 cured the
22 deficiency identified in the FDO. The County's repeal of Amendment U-5 removed the
23 violation of RCW 36.70A.110. The Board concludes that the County has **complied** with the
24 GMA and the Board's order as to Amendment U-5.

25 26 III. FINDING OF COMPLIANCE

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28 Based upon review of the August 2, 2010 Final Decision and Order, Pierce County's
29 Statement of Actions Taken to Comply, the responses of various parties, the Board's review
30 of Ordinance Nos. 2010-86s and 2010-87, the arguments and comments offered in the
31 briefing and at the compliance hearing, and having deliberated on the matter, the Board
32 finds:

- 1
- 2 • By adopting Ordinance Nos. 2010-86S and 2010-87, Pierce County has complied
- 3 with the goals and requirements of the GMA as set forth in the Board's FDO and the
- 4 GMA. The Board therefore enters a **finding of compliance** for Pierce County Re:
- 5 Ordinance Nos. 2010-86S and 2010-87 [Amendments U-8a, U-5, and C-3].
- 6

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8 **IV. ORDER**

9 Based upon the foregoing, the Board ORDERS:

- 10 • Pierce County's adoption of Ordinance Nos. 2010-86s and 2010-87 corrects the
- 11 deficiencies found in Amendments U-8a, U-5, and C-3 of Ordinance No. 2009-71s
- 12 and **complies** with the goals and requirements of the GMA as set forth in the Board's
- 13 August 12, 2010 Final Decision and Order. The Board therefore enters a **finding of**
- 14 **compliance** for Pierce County Re: Ordinance No. 2010-86s and 2010-87
- 15 [Amendments U-8a, U-5, and C-3].
- 16
- 17 • GMHB Case No. 10-3-0003c, *North Clover Creek et al v Pierce County* is **closed**.

18 DATED this 18th day of January, 2011.

19

20 _____

21 Margaret A. Pageler, Board Member

22

23 _____

24 David O Earling, Board Member

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26 _____

27 William P. Roehl, Board Member

28 Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party

29 files a motion for reconsideration pursuant to WAC 242-02-832.¹²

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31 ¹² Pursuant to RCW 36.70A.300 this is a final order of the Board.

32 Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original

ORDER ON COMPLIANCE

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January 18, 2011

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26 and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of
27 record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240,
WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial
review.

28 Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as
29 provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior
30 court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement.
31 The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the
32 Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW
34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means
actual receipt of the document at the Board office within thirty days after service of the final order. A petition for
judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

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